IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10161 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LADUBEN DILIPBHAI VASAVA

Versus

DISTRICT MAGISTRATE

Appearance:

HL PATEL ADVOCATES for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

#. District Magistrate, Bharuch, passed an order on October 7, 1999, in exercise of powers under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenue under the provisions of the PASA Act.

#. The grounds of detention indicate that the detaining authority considered six offences registered against the detenue under the Bombay Prohibition Act. The detaining authority considered the statements of three anonymous witnesses and came to a conclusion that the detenue is a "bootlegger" and that her activities are detrimental to public order. The authority considered the possibility of resorting to less drastic remedies and came to a conclusion that the detention under the PASA Act is the only efficacious remedy which can achieve result of immediate prevention of the detenue from resorting to her illegal and anti-social activities.

#. The detenue has challenged by this petition the order of detention on various grounds. However, Mr. Patel, learned advocate for the petitioner has restricted his arguments to the ground of delay in passing the order. He has drawn attention of this Court to the fact that the statements of anonymous witnesses are recorded on 17th August, 1999. The same were verified by Dy.S.P. on 18th August, 1999. The detaining authority verified the statements on 27th September, 1999 and the order was passed on 7th October, 1999. Mr. Patel therefore, submitted that even if the last date of verification by the detaining authority is considered, there is delay of about 10 days in passing the order, which has not been explained. The delay in passing the order after verification would indicate that the satisfaction recorded by the detaining authority for the urgent need for detaining the detenue under the PASA Act is not genuine and therefore, the order would stand vitiated. He submitted that the petition may be allowed on this ground.

#. Mr. K.T.Dave, learned AGP opposed this petition.

#. There is no dispute about the factual aspects and the dates given in respect of recording of statements, verification and passing of the order. It is clear that the verification by the detaining authority was after about one month and 10 days from the date of verification by Dy.S.P. and after verification by the detaining authority, there is lapse of about 10 days in passing the order. This indicates that the urgency shown in the order for resorting to detention under the PASA Act is not genuine, and therefore, the subjective satisfaction stands vitiated so also the order of detention. The petition, therefore, deserves to be allowed.

5.1 It may be noted that the detaining authority or

the State Government have not filed any affidavit-in-reply to explain the delay either before verification by the detaining authority or after the verification by the detaining authority.

#. In view of the aforesaid discussion, the petition is allowed. Impugned order of detention dated October 7, 1999 is hereby quashed and set aside. The detenue - Laduben Dilipbhai Gambhirbhai Vasava is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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